IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.4445 OF 2006

Mangaldas Vitthal Bandal .. Applicant

Versus

State of Maharashtra .. Respondent

Mr.Rajiv Patil with S.R.Bhosale for applicant
Mr.Rajesh More, A.P.P. for State.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 20th December 2006

P.C.

. Applicant apprehends arrest in connection with C.R.No.171 of 2006 which is registered by the Shikrapur Police station, alleging offences

punishable under section 3(i)(v) and 3(i)(x) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act together with offences punishable under sections 447, 452, 323, 504, 506 read with 34 I.P.C.

2. The F.I.R. is lodged by one Manda. She is residing at village Jategaon, Taluka Shirur, Dist. Pune. It is her case that Gat No.312, village Jategaon is in her possession and cultivation. The same has been given to her by her father in law way back in the year 1982. The applicant and other accused entered the land and forcibly ploughed the field with the Tractor and ransacked the Jowar crop on the field. When she was present at site and questioned them, applicant and one Ashok Yevle abused her in the name of her caste, assaulted her and drove her out of land.

3. Mr.Patil submits that the allegations

taken as a whole, fail to make out a prima facie case under the Atrocities Act. He submits that the applicant is a Sarpanch of village Shikrapur. The land is claimed by accused No.3, Patekar, who is himself belonging to scheduled caste. There is admittedly a civil dispute pending between the complainant and accused No.3. He submits that the other accused were arrested and applied for regular bail. While enlarging them on bail, the learned Sessions Judge observed that the complainant or her father had no right in the land, prima facie, and accused No.3 who himself belongs to scheduled caste appears to be a rightful owner of the land. Learned Judge held that accused No.2 and 4 were not residents of village Jategaon and they had no reason to remain present at site. In the bail application the observations are made with regard to accused Nos. 1 to 3. Applicant is the accused No.4. He applied for anticipatory bail and his application has been rejected on the ground that the case

does not appear to be on par with the co-accused. The applicant is prima facie guilty of offences punishable under the Atrocities Act and, he, therefore, cannot be enlarged on bail. The bail was denied also on the ground that the applicant is a prominent person holding post of Sarpanch. Mr.Patil points out that the very reason that applicant is Sarpanch is enough to involve him on account of political rivalry. Further, he is not at all concerned with the civil dispute which is between two persons belonging to the Scheduled Caste. In such circumstances and when the learned Judge has enlarged the other persons allegedly abusing and threatening the complainant, on regular bail, there is no case made out as far as the present applicant is concerned. His application, therefore, should have been granted.

4. Mr.Patil relies upon the following decisions of this Court.

i) 2005 ALL MR (Cri) 2602 (Manohar s/o.Martandrao Kulkarni & Anr. Vs. State of Maharashtra & Ors.

ii) 2001 ALL M.R. (Cri) 219 (Bai @ Laxmibai w/o.Nivratti Poul & Ors. Vs. State of Maharashtra)

iii) 1995(2) Mh.L.J. 669 (Ramchandra Govindrao Watkar & Anr. Vs. State of Maharashtra)

5. Learned A.P.P. on the other hand submits that the case is under the Atrocities Act and a woman belonging to scheduled caste has been threatened and abused in the name of caste. The applicant is an influential person and was absconding. In such circumstances and when the other accused has to be arrested so also investigations being in progress, applicant

should be refused the discretionary relief of pre-arrest bail.

6. With the assistance of learned Counsel for both sides I have perused the statement of complainant lady. She has traced her title to the subject land. The land is allegedly purchased by complainant's father from one Patekar in 1982. She states that she is cultivating the same. She states that on 25th November 2006, on the date of incident, she was alone ploughing the field. During the course of her activity in the afternoon the applicant along with one Ashok Yevle came with Tractor on the land and allegedly abused her. The abuses are allegedly hurled by both. Complainant states that since both of them abused and threatened her, she ran away from the field. It is on this allegation that the F.I.R. alleges commission of offences under section 3(i)(x) and 7(i)(d) of the Protection of Civil Rights Act.

7. Punishment is for offences of Atrocities by a member who is not belonging to Scheduled Caste or Scheduled Tribe but intentionally insulting or intimidating with intent or humiliating a member of Scheduled Caste and Scheduled Tribe in a public place. In the instant case, the Sessions Judge in para 3 of his order dated 11th December 2006 while enlarging co-accused Amol, Ramdas and Pravin on bail observed as under:-

> "3. Heard the Advocates for accused and State. Gone through the documents placed on record. On the face there appears civil dispute between the complainant and accused No.3 relating to landed property. Applicant/accused No.3 is on the face belonging to Mahar community and as such cannot be said to have committed any offence under the

provisions of Atrocity Act. Apart from this, document placed on record indicates that he has purchased the land under the registered sale deed from the owner of the land Ranubai Patel. The mutation entry is certified in his name on the strength of the sale deed. The 7 x 12 extract of the land indicates the land standing in the name of Ranubai Patel and the said land is purchased by Applicant No.3/accused recently on 2/11/2006. The complainant alleged that her father has also purchased the same land from Ranubai in the year 1982 but the Revenue record does not show the entry in the name of father of applicant No.3. By this time, there is no reason to presume that complainant has really inherited the land from her father or allowed to remain in the land by her father. Consequently her possession is difficult to accept, in the

land on the day of incident. On the contrary, accused No.3 appears to be legal owner of the land. Therefore, the question of encroaching in to the land belonging to complainant does not arise by any of the accused in order to commit the offence and disposses the complainant.

4. Accused Nos. 1 and 2 are resident of village Mukhai and Jalegaon. Accused No.1 have no occasion to go to village Jalegaon. Accused Nos. 1 and 2 cannot be said to be involved in the offence. Under these circumstances, there appears no reason to keep the accused persons behind the bar. The accused are required to be enlarged on bail. Hence, the application is to be allowed with following conditions"

8. It is in the light of these observations that the applicant, apprehending his arrest, applied for anticipatory bail. The learned Judge has not been able to assign cogent reasons for denying anticipatory bail to him. Learned A.P.P., apart from inviting my attention to the statement of complainant, is unable to point out any distinguishing feature as far as present applicant is concerned. The case is broadly summarised in the order dated 11th December 2006. Further, the applicant alone is not attributed any role in the alleged abuses. Anticipatory bail is denied only because he is Sarpanch of adjoining village. In such circumstances and when the applicant is willing to cooperate with the investigation and attend police station, he deserves anticipatory bail. Hence, following order:-

i) In the event of the arrest of the applicant in connection with C.R.No.171

of 2006 registered with Shikrapur Police Station, the applicant shall be enlarged on bail in the sum of Rs.15,000/- with one or two sureties in the like amount.

ii) The bail is granted subject to condition that the applicant will attend the Shikrapur police station as and when summoned. The applicant shall not enter Jategon village till charge sheet is filed.

iii) Bail is granted subject to condition that the applicant shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of accusation against him so as to dissuade him from disclosing such facts to the Court or to the police officer/ investigating agency. The applicant

shall not tamper with the prosecution evidence.

iv) Any observation made in this order shall not be construed as any finding or any expression of opinion on the merits of the case at the time of trial

v) This order will enure to the benefit of the applicant only till charge sheet is filed. Thereafter, he will be free to apply to the appropriate court for appropriate relief.

vi) Application is disposed of in above terms.

vii) The parties to act upon an authenticated copy of this order.

(S.C.DHARMADHIKARI, J)